

CLAUSE I-39 – DEFINITIONS (August 2002)

As used throughout this subcontract, the following terms have the meanings set forth below:

- (a) The term "Head of Agency" means the Secretary, Deputy Secretary, Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) The term "DOE" means the Department of Energy and "FERC" means the Federal Energy Regulatory Commission.
- (c) The term "Subcontracting Officer" means the person with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings. The term includes certain authorized representatives of the Subcontracting Officer acting within the limits of their authority as delegated by their Subcontracting Officer.
- (d) The term "SURA" shall mean the Trustees of Southeastern Universities Research Association, Inc. or any duly authorized representative or representatives thereof.
- (e) The term "Business Services Director" or "Subcontracting Officer" means the person executing this subcontract on behalf of SURA. The term includes the authorized representative of the Business Services Director, acting within the limits of his authority (Business Services Representative).
- (f) Except as otherwise provided in this subcontract, the term "subcontract" includes but is not limited to purchase orders and changes and modifications to purchase orders under this subcontract.
- (g) The term "Subcontractor" shall mean the individual or organization who has entered into this subcontract with SURA, and who is responsible for the performance of the work hereunder.
- (h) The term "Commercial component" means any component that is a commercial item.
- (i) The term "Commercial item" means –
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that –
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or licensed to the general public.
 - (2) Any item that evolved from an item described in paragraph (i)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation.
 - (3) Any item that would satisfy a criterion expressed in paragraphs (i)(1) or (i)(2) of this clause, but for –
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (i)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (i)(1), (2), (3), or (4) of this clause, and if the source of such services –
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

- (7) Any item, combination of items, or service referred to in subparagraphs (i)(1) through (i)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries; or affiliates of a subcontractor; or
- (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (j) The term “Component” means any item supplied to the Federal Government as part of an end item or of another component.
- (k) The term “Nondevelopmental item” means –
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (k)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (k)(1) or (k)(2) solely because the item is not yet in use.